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REMARKS

Filed concurrently herewith is a Request for a Three-Month Extension of Time which shortens the statutory period for response to January 19, 2005. Accordingly, Applicant respectfully submits that this response is being timely filed.

The Official Action dated July 17, 2004 has been received and its contents carefully noted. In view thereof, claims 15, 19, 23 and 29 have been further amended in order to better define that which Applicant regards as the invention. As previously, claims 15-30 and 32-34 are presently pending in the instant application.

With reference now to the Official Action and particularly page 2 thereof, the drawings have been objected to under 37 C.F.R. §1.83(a) in that the drawings must show every feature of the invention specified in the claims. Particularly, the Examiner is of the position that the phrase "the closure surface extending from a lowest point of said inner wall" must be shown of the feature canceled from the claims. In this regard, it is respectfully submitted that this feature is clearly shown by Applicant's drawings and particularly Figs. 14 and 15 thereof. Accordingly, it is respectfully submitted that every feature of the invention specified in the claims is set forth in the drawings and consequently Applicant's drawings are in proper formal condition for allowance.

With reference now to page 3 of the Office Action, claims 15-30 and 32-34 have been rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Particularly, the Examiner is of the opinion that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had position of the claimed invention. Specifically, the Examiner states that the phrase "at least an inner surface of said outer wall is substantially planar in a region extending from

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said plurality of cut outs to an outer edge of said circumferential rim" is not adequately disclosed in Applicant's specification. Moreover, the Examiner is of the position with respect to claim 23, that it has not been adequately disclosed that the closure surface extends from a lower most point on the inner wall.

With respect to the latter, as noted hereinabove Figs. 14 and 15 clearly disclose that the closure surface extends from a lower most portion of the inner wall. Accordingly, it is respectfully submitted that Applicant's specification and drawings adequately disclose this feature. With respect to the phrase "at least an inner surface of said outer wall is substantially planar in a region extending from said plurality of cut outs to an outer edge of said circumferential rim" as recited in claims 15, 19, 23 and 29, while Applicant respectfully disagrees with the Examiner, as can be seen from the foregoing amendments, this language has been deleted from each of claims 15, 19, 23 and 29 and replaced with language which is clearly supported by Applicant's specification. That is, each of independent claims 15, 19, 23 and 29 now recite that "at least an inner surface of said outer wall cylindrically circumscribes the outer brim surface of the container in a region extending from said plurality of cut outs to an outer edge of said circumferential rim". In this context, Applicant intends this language to mean that each circumferential point in a given circumference of the inner surface of the outer wall of the lid are circumferentially aligned with one another. That is there is no intermittent extensions extending from the inner surface of the outer wall as is clearly supported by the several figures as well as Applicant's specification. Accordingly, it is respectfully submitted that each of independent claims 15, 19, 23 and 29 comply with the written description requirement and contains subject matter which is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the

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inventors, at the time the application was filed, has possession of the presently claimed invention.

Referring now to page 4 of the Office Action, claims 15-30 and 32-34 have been rejected under 35 U.S.C. §112, second paragraph as failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Particularly, the Examiner is of the position that it has not been adequately disclosed that "at least an inner surface of said outer wall is substantially planar in a region extending from said plurality of cut outs to an outer edge of said circumferential rim" as recited in claims 15, 19, 23 and 29.

In this regard, as can be seen from the foregoing amendments, the phrase noted by the Examiner as being indefinite has been deleted and replaced by claim language which particularly points out and distinctly claims the subject matter which Applicant regards as the invention. That is, each of independent claims 15, 19, 23 and 29 recite that at least an inner surface of the outer wall cylindrically circumscribes an outer brim surface of the container in a region extending from plurality of cut outs to an outer edge of the circumferential rim. That is, as noted hereinabove it is Applicant's position that this language recites that points which circumscribe the outer brim surface of a container of the inner surface of the outer wall of the circumferential rim are continuous and therefore do not include intermittent projections extending from an inner surface of the outer wall. Accordingly, it is respectfully submitted that each of claims 15, 19, 23 and 29 now particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Furthermore, with respect to claim 23, as noted hereinabove, it is respectfully submitted that Applicant's specification, particularly Figs. 14 and 15, adequately disclosed that the closure surface extends from a lower most point of the inner wall. While the Examiner refers to the drawings of the instant invention showing that 36 extends below the

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bottom of the closure surface, it is noted that the Figs. 14 and 15 do not include the extension 36 and thus adequately disclose that the closure surface may extend from a lower most point of the inner wall. Accordingly, it is respectfully submitted that Applicant's claimed invention as set forth in independent claim 23 is now in proper formal condition for allowance.

Referring now to page 5 of the Office Action, claims 15, 16, 19 and 20 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,604,547 issued to Luburic. This rejection is respectfully traversed in that the patent to Luburic clearly fails to disclose or remotely suggest that which is presently set forth by Applicant's claimed invention. Moreover, it is far removed from that which is specifically set forth by Applicant's claimed invention.

Particularly, the Examiner is of the position that Figs. 4-7 of Luburic set forth the claimed structure where 10 and 11 are the openings. The Examiner goes on to note that col. 6, lines 50-61 recite that both 10 and 11 can be opened at the same time and 8 is considered the access opening. The Examiner goes on to state where the outer wall is at lead line 100, the openings are formed in the transition wall on the top and the inner wall is 2. The area that is under the opening is capable of receiving a container and the brim or rim would be visible through the openings 10 and 11. The Examiner notes that the claim does not positively recite the container. Clearly, this is not the case.

As specifically set forth in the Luburic reference, the openings while they can be opened at the same time, it is clear that even if both openings are opened at the same time, it is not possible to view the rim of an underlying container as is clear from Fig. 7. That is, while the Examiner states that the area under the opening is capable of receiving a container brim or rim, this is absolutely contrary to that set forth by Luburic. Moreover, the cut outs referred to by the Examiner and set forth in Luburic are in fact openings 10 and 11 which

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permit access to the contents of the container. Moreover, the tear strip openings 10 and 11 are referred to in col. 6 as allowing the container to vent or breath during pouring. Clearly, the disclosure of Luburic fails to anticipate that which is presently set forth by Applicant's claimed invention. Specifically, as recited in each of independent claims 15, 19, 23 and 29, a circumferential seal is formed adjacent to the circumferential rim the circumferential seal being positioned along an inner side wall between the cut outs and the closure surface. Clearly, the patent to Luburic fails to include such a circumferential seal. Moreover, if such circumferential seal were provided, the openings or tear strips 10 and 11 and the closure surface referred to as capable of gaining access to the contents of the container preventing the container during pouring would not function as intended. If there was a seal formed between the tear strips openings 10 and 11, the container could not be vented in order to breath during pouring. Accordingly, it is respectfully submitted that Applicant's claimed invention as set forth in each of independent claims 15, 16, 19 and 20, as well as those claims which depend therefrom clearly distinguish over the teachings of Luburic and are in proper condition for allowance.

With refer reference to page 5 of the Office Action, claims 15, 16, 18-21, 22-26, 28-30, 32 and 34 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,538,154 issued to Von Holdt in view of U.S. Patent No. 5,103,593 issued to Bingisser. This rejection is again respectfully traversed in that the combination proposed by the Examiner neither discloses nor suggests that which is presently set forth by Applicant's claimed invention.

As can be seen from the foregoing amendments, each of independent claims 15, 19, 23, and 29 have been amended to recite a lid for a container having a brim including an inner, outer and a top brim surface with the lid comprising a closure surface, circumferential rim, a

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plurality of cut outs formed in at least a transition wall of the circumferential rim, a circumferential seal formed adjacent to the circumferential rim with the circumferential seal being positioned along the inner side wall between the cut outs and the closure surface and at least one access portion formed in the closure surface, wherein at least an inner surface of the outer wall cylindrically circumscribes the outer brim surface of the container in a region extending from the plurality of cut outs to an outer edge of the circumferential rim, and at least a portion of the brim of the container is visible through each of said plurality of cut outs when the lid is positioned on the container. Clearly, the combination proposed by the Examiner fails to disclose these features.

That is, as can be seen from the foregoing amendments, the circumferential rim which includes the outer wall has an inner surface of such outer wall which cylindrically circumscribes the outer brim surface of the container. That is, as noted hereinabove, in accordance with Applicant's claimed invention, each point along an inner circumference of the inner surface of the outer wall are circumferentially aligned with one another and do not extend inwardly and thus do not include intermittent projections. Again, these features are clearly supported by Applicant's description and the several figures.

In rejecting Applicant's claimed invention, the Examiner again relies on the teachings of Von Holdt as meeting all the limitations set forth therein except the provision that an access opening is formed in a closure surface. In light of this shortcoming, the Examiner relies on the teachings of Bingisser which illustrates a container structure similar to that of Von Holdt with an access port in the closure surface. While this may be the case, it is respectfully submitted that the patent to Von Holdt when taken alone or in view of the teachings of Bingisser clearly fails to disclose or remotely suggest that which is presently set forth by Applicant's claimed invention. Again, as with the previous Office Action, the

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Examiner is relying on the teachings of Von Holdt as disclosing a plurality of openings around a periphery of a container lid as shown in the embodiment illustrated in Figs. 9-11 thereof. Unlike the present invention both the Von Holdt and Bingisser references disclose lids which are substantially permanently secured to the container to prevent the lids from inadvertently popping off when dropped. To this end, the disclosure of Von Holdt includes a plurality of panels 22, which intermittently extend outwardly from an inner surface of the outer side wall of the lid configuration. The panels 22 and particularly 22C illustrated in Figs. 9-11 are intermittently spaced about of the inner surface of the outer side wall and extend into a space formed between the inner and outer side walls of the lid. As the Examiner can appreciate from col. 5, lines 30+ of the Von Holdt disclosure;

“the respective inwardly extending, spaced panels 22C are integrally molded with annular peripheral flange 14c, as before, but with each panel 22C being associated with an upper aperture 76, which is provided to permit portions of the mold to form the panels 22C without the presence of the side apertures in the angular flange 14C”.

With reference now to page 6 of the Office Action, claims 15, 16, 18-21, 22-26, 28-30, 32 and 34 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,858,756 issued to Fulton in view of U.S. Patent No. 4,428,498 issued to Obey. This rejection is likewise respectfully traversed in that the combination proposed by the Examiner clearly fails to disclose or remotely suggest that which is presently set forth by Applicant's claimed invention.

In rejecting Applicant's claimed invention, the Examiner states that Fulton teaches at least one vent opening in the transition wall and further relies on the fact that the lid has four vent receiving areas and states that it would have been obvious to employ a vent in each one of these areas to provide sufficient venting. In this regard, the vent openings referred to by the Examiner are just that, vent openings and by definition require communication between

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the outer environment and the contents of the container. That is, in accordance with the teachings of Fulton and in order for the device of Fulton to operate as intended, it is impossible for there to be a circumferential seal formed adjacent to the circumferential rim and in a position along the inner side wall between the cut outs and closure surface. If such were the case, there could be no communication between the contents of the container and the atmosphere consequently no venting as is the purpose of the openings 11 of Fulton would occur. Accordingly, it is respectfully submitted that Fulton clearly neither discloses nor remotely suggests that which is presently set forth by Applicant's claimed invention when taken alone or in combination with the teachings of Obey which merely disclose an access opening in the lid of a container. Accordingly, it is respectfully submitted that each of independent claims 15, 19, 23 and 29 as well as those claims which depend therefrom clearly distinguish over the combination proposed by the Examiner and are in proper condition for allowance.

Therefore, in view of the foregoing, it is respectfully requested that the objections and rejections of record be reconsidered and withdrawn by the Examiner, that claims 15-30 and 32-34 be allowed and that the application be passed to issued.

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Should the Examiner believe a further conference would be of benefit in expediting the prosecution of the instant application, he is hereby invited to telephone counsel to arrange such a conference.

Respectfully submitted,



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